In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 379

SAMUEL SOSA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The judgment of the court of appeals was entered on May 22, 1967. A petition for rehearing was denied on June 15, 1967. The petition for a writ of certiorari was filed on July 17, 1967, and is therefore out of time under Rule 22(2) of the Rules of this Court. There is, in any event, no occasion for further review.

After a non-jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted of conspiring to sell narcotics, in violation of 21 U.S.C. 174. On May 20, 1966 he was sentenced to imprisonment for six years. The court of appeals affirmed (Pet. App. A).

Federal Narcotics Agent Robert Waltz testified that, while working under cover, he was present at the

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Petite Lounge in Chicago on September 17, 1964. At that time an informer, Angelo Ramirez, introduced him to petitioner, the owner of the tavern (A. 2–3).[1] On November 17, petitioner approached Waltz and indicated that he had been enlisted by a friend to find a customer for a quantity of heroin (A. 3). A discussion about the quantity, quality, and price of the heroin followed, and resulted in petitioner's agreement to introduce Waltz to the friend. Petitioner told Waltz that his friend had one-half a kilogram of heroin, worth up to $14,000, for sale, and that if the entire amount were sold, petitioner would receive $2,000 for arranging the transaction (A. 3–4).

On November 23, 1964 petitioner telephoned Waltz and informed him that he would meet the supplier at 7 p.m. the following day at the Petite Lounge. Waltz was advised to call petitioner between 5 and 7 p.m. At 6:30 on November 24, Waltz communicated with petitioner, who stated that his friend had not yet arrived, and that the meeting place and time had been changed to the Cafe Olé at 8:30 p.m. (A. 4). At the latter time and place, Waltz met co-defendant Julio Argumedo, who introduced himself as "Sam's friend Julio from the Petite Lounge" (A. 5). Waltz and Argumedo left the cafe and drove in Waltz's car to a parking lot, where Argumedo told Waltz that his supply of heroin was still in Mexico (A. 5). On November 27, Waltz drove to the Cafe Olé with another agent, but entered the tavern alone. He met Argumedo there, and they engaged in another discussion. Argu-

[1] Citations are to "Appellant's Joint Appendix," filed with the Clerk of this Court.

medo said that he would arrange to go to Mexico and obtain the heroin (A. 5). On December 3, 1964, at the Petite Lounge, Waltz sat at a table with petitioner, Argumedo and another man. Waltz asked Argumedo whether the plans were still the same. Argumedo advised Waltz that "everything is all right" (A. 6). Petitioner turned to Waltz and asked, "Why should there be any changes?" Waltz replied that he was inquiring because he had "anxious customers."

On December 22, 1964, Waltz spoke with petitioner at the Petite Lounge. He expressed concern that he had not heard from Argumedo. Petitioner remarked that if anyone should worry, it should be he, because he had given Argumedo $500 as part of the "purchase money" (A. 6). On December 28, Waltz received a call from petitioner, who advised him that Argumedo had returned and would call the following day. He did so, and on the evening of December 29 sold heroin to Waltz in the latter's car. Agents who had maintained a surveillance of the car then arrested Argumedo (A. 7).

The sole issue presented in this case is whether the government was obligated to produce the "informer" who had introduced petitioner to Waltz two months before the first discussion concerning a sale of narcotics occurred. The informer, Ramirez, was not a participant in the crime. He was not present when negotiations commenced and never participated in the discussions between petitioner and Waltz or Argumedo and Waltz. Nevertheless, his name and physical description were given to petitioner's counsel during the cross-examination of Waltz. At that time the witness did not know the informer's address

(A. 8). The next day, when an address was furnished to counsel, he made no request for a continuance so that Ramirez could be located and subpoenaed.

The court below stated (Pet. 3a):

> As Sosa was content with the information supplied, he will not now be heard to say he was prejudiced because the Government failed to do more than fairness required it to do.

Since it is settled that under these circumstances the government, having disclosed its information about the informer, had no duty to produce him (see *Cooper* v. *California,* 386 U.S. 58, 62 n.2; *United States* v. *Repetti,* 364 F. 2d 54 (C.A. 2); *United States* v. *Simmons,* 338 F. 2d 804 (C.A. 2), certiorari denied, 380 U.S. 983; *Williams* v. *United States,* 273 F. 2d 781 (C.A. 9), certiorari denied, 362 U.S. 951), further review would be unwarranted.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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